Arent Fox

October 1, 2009

Ross A. Buntrock
Attorney
202.775.5734 DIRECT
202.857.6395 FAX
buntrock.ross@arentfox.com

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Ex Parte* Presentation: WC Docket No. 07-135

Dear Ms. Dortch:

Northern Valley Communications, LLC ("Northern Valley") and Sancom, Inc. ("Sancom"), through counsel, respond to the recent *Ex Parte* letter filed by AT&T.[1]

AT&T Casts the First Stone at Google for Call Blocking Despite AT&T's Nationwide Campaign of Self-Help

AT&T alleges that "Google is systematically blocking telephone calls from consumers that use Google Voice to call telephone numbers in certain rural communities. By blocking these calls, Google is able to reduce its access expenses." AT&T *Ex Parte* at 1. Northern Valley and Sancom agree with AT&T that call blocking is an impermissible form of self-help, but write separately to add that AT&T is engaging in very similar conduct to "reduce its access expenses" by simply refusing to pay its bills, thereby forcing small, rural LECs across the country to institute costly collection actions in federal courts. Indeed, if one were to replace "Google" with "AT&T" and "call blocking" with "no pay" in AT&T's *Ex Parte*, Northern Valley and Sancom would have little to add to describe AT&T's unlawful campaign of self-help. The only difference between Google's alleged call blocking and AT&T's refusal to pay terminating access charges for conference and chat-line calls is that LECs are forced to incur the costs of terminating AT&T's customers' traffic. In essence, AT&T is getting all of the benefits from "free" access to the LECs' network without any of the burdens. Without a hint of irony, AT&T concludes that "the Commission cannot, through inaction or otherwise, give Google a special privilege to play by its own rules while rest of the industry … must instead adhere to Commission regulations." AT&T *Ex Parte* at 4.

The Commission regulations — as they relate to CLEC access charges and the corresponding duty of IXCs to pay those charges — which AT&T falsely purports to comply

[1] Letter from Robert W. Quinn, Jr., Senior Vice President, AT&T, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 07-135, *et al.* (September 25, 2009) ("AT&T *Ex Parte*").

with, were established, in part, by the Commission in its 2001 *Seventh Report and Order*.[2] In that Order, the Commission struck a compromise. It strictly regulated CLEC access rates to ensure that they were set at reasonable levels, and they deemed those tariffed rates to be conclusively reasonable, to ensure that IXCs could not refuse payment. In establishing this system, the Commission expressly noted its concerns over IXCs such as AT&T repeatedly using self-help by simply refusing to pay tariffed access charges:

> Reacting to what they perceive as excessive rate levels, the major IXCs have begun to try to force CLECs to reduce their rates. The IXCs' primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. Thus, Sprint has unilaterally recalculated and paid CLEC invoices for tariffed access charges based on what it believes constitutes a just and reasonable rate. AT&T, on the other hand, has frequently declined altogether to pay CLEC access invoices that it views as unreasonable. We see these developments as problematic for a variety of reasons. We are concerned that the IXCs appear routinely to be flouting their obligations under the tariff system. Additionally, the IXCs' attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts. And finally, the uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute.

Seventh Report and Order, 16 FCC Rcd. at 9932, ¶ 23 (citations omitted).

This holding is consistent with decades of FCC precedent prohibiting self-help. The Commission's position on this matter has been stated repeatedly and unequivocally: "[T]he law is clear on the right of a carrier to collect its tariffed charges, even when those charges may be in dispute between the parties...." *Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone of Missouri, Inc.*, 4 FCC Rcd. 8338, 8339, ¶ 9 (1989) (*Tel-Central*). *See also Communique Telecommunications, Inc. DBA Logicall*, 10 FCC Rcd. 10399, 10405, ¶ 36 (1995).

> The Commission previously has stated that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.

---

[2] *Access Charge Reform and Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-98, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 (2001).

Business WATS, Inc., v. AT&T Co., 7 FCC Rcd. 7942, ¶ 2 (1989) (citing *MCI Telecommunications Corporation, American Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company*, 62 FCC 2d 703, ¶ 6 (1976) (*MCI Telecommunications Corp.*)); *see also National Communications Ass'n. v. AT&T Co.*, No. 93 CIV. 3707, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001) (citing both FCC decisions).

> The Bureau rejected Frontier's argument that a "dispute" as to a carrier's eligibility to receive compensation negates the IXC's obligation to pay compensation in the first instance. The Bureau stated that an IXC disputing the veracity of a LEC's certification must do so by initiating a proceeding at the Commission, *e.g.*, through a Section 208 complaint against the LEC. We agree with the Bureau....

Bell Atlantic-Delaware v. Frontier Communications Services, Inc., 15 FCC Rcd. 7475, 7479-80, ¶ 9 (2000).

The Commission has found that self-help refusals to pay access charges violate two sections of the Communications Act. Both the Commission and the courts have found that self-help constitutes a violation of section 201(b) of the Communications Act, which prohibits "unreasonable practices." *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 55 (2007); *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd. 11647 (1999); *Tel-Central*, 4 FCC Rcd. 8338 (1989).

In *MCI Telecommunications Corp.*, the Commission found that MCI's "self-help approach" violates section 203 of the Act and "existing case law." 62 F.C.C. 2d at 705-06. The Commission explained:

> Section 203(c) of the Act specifically forbids carriers from charging or collecting different compensation than specified in an effective tariff. Tariffs which are administratively valid operate to control the rights and liabilities between the parties. Rates published in such tariffs are rates imposed by law. Withdrawal from this position would invite unlawful discrimination. **** We cannot condone MCI's refusal to pay the tariffed rate for voluntarily ordered service.

62 F.C.C. 2d at 706, ¶ 6. The Commission noted that its "finding that self-help is not an acceptable remedy does not leave MCI without recourse." *Id.* It directed MCI to sections 206 — 209 of the Act "which set forth a complaint procedure to be used by persons who believe that a carrier is violating the Act." *Id.*

Arent Fox

But AT&T and other major IXCs are routinely flouting their obligation to seek any potential redress via the complaint procedure, and are instead forcing small carriers to engage in a costly game of "catch me if you can" in federal court. AT&T claims that it seeks only a "level playing field" and to end the special privileges that come by playing by one's own rules. AT&T *Ex Parte* at 4. The Commission should act on AT&T's recommendation and hold AT&T — and all IXCs — to the same standards to which AT&T now seeks to hold Google. Whether self-help takes the form of call blocking or simply refusing to pay, the law is clear that such conduct is unjustified. The IXCs, however, are in desperate need of reminder of their obligations under the law.

Respectfully submitted,

Ross A. Buntrock,
Counsel to Northern Valley Communications, LLC. and Sancom, Inc.

cc: Chairman Julius Genachowski
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Michael J. Copps
Commissioner Meredith Attwell Baker
Priya Aiyar, Legal Advisor to Chairman Julius Genachowski
Christine Kurth, Legal Advisor to Commissioner McDowell
Carol Simpson, Legal Advisor to Commissioner Clyburn
Jennifer Schneider, Legal Advisor to Commissioner Copps
Christi Shewman, Acting Legal Advisor to Commissioner Baker
Sharon Gillett, Chief, WCB
Donald Stockdale, Deputy Chief, WCB
Julie Veach, Deputy Chief, WCB
Doug Slotten, WCB
Lynne Hewett Engledow, WCB